

HUMAN SERVICES BOARD

INTRODUCTION

Upon submitting their materials, OVHA raised the Board's jurisdiction to hear the within appeal arguing that the petitioner had filed her appeal beyond the appeal deadlines in Fair Hearing Rule No. 1.

Accordingly, the Board addresses OVHA's request to dismiss the petitioner's fair hearing and bases its decision upon documentary evidence and evidence adduced at hearing.

FINDINGS OF FACT

1. The petitioner is the niece of the decedent A.L. (referred to as "the aunt"). On or about November 16, 2004, the aunt quitclaimed her interest in real property located at [address] in Burlington, Vermont to the petitioner and herself as joint tenants with rights of survivorship.

2. On or about May 3, 2005, the aunt quitclaimed her interest in said real property to her brother, R. L.¹

3. During March 2005, the aunt entered Birchwood Terrace Nursing Home.

4. The aunt applied for Long-Term Care Medicaid benefits on or about September 22, 2005.

5. OVHA documented repeated attempts to obtain documentation from the aunt in order to determine eligibility. Part of these requests included information regarding the transfer of said real property to the

¹At that time R.L. had power of attorney over the aunt until the Office of Public Guardian was appointed. According to petitioner, R.L. is now executor of the aunt's estate.

petitioner and to R.L. because OVHA questioned whether a penalty period should apply.

6. Petitioner had legal representation during discussions regarding how to treat said real property. Both petitioner and R.L. quitclaimed their respective interests in said real property to the aunt on or about February 16, 2006. A disqualification period did not apply.

7. On March 16, 2006, the Department found the aunt eligible for Long-Term Care Medicaid effective July 6, 2005 with a patient share. The Notice of Decision set out the patient share as follows:

Your patient share for 7/2005 with 8/2005 income will be \$1,295.11, prorated month. Your patient share for 8/2005 with 9/2005 income will be \$1,560.38 each month (ongoing). Your patient share for 1/2006 with 2/2006 income, will be \$1,593.38, this will be ongoing, due to the increase in your Social Security Income.

Based on this decision, the Department did not cover any of the monies due Birchwood for the aunt's care prior to July 6, 2005.

8. The 90 day period for appealing the March 16, 2006 Notice of Decision ended on June 14, 2006.

9. The Board received petitioner's request for fair hearing on January 5, 2007.² Petitioner mailed her request on January 3, 2007.

ORDER

The Department's Motion to Dismiss is granted.

DISCUSSION

The Board promulgated Fair Hearing Rules pursuant to 3 V.S.A. § 3091. Requests for fair hearings are governed by Fair Hearing Rule No. 1 including when a fair hearing should be requested. The relevant portion of Fair Hearing Rule No. 1 states:

Appeals from decisions by the Department. . .shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose. . . All other appeals must be made within 30 days from the date the grievance arose, unless otherwise provided by statute.

If there was a disagreement with the amount of patient share the aunt was required to pay to Birchwood or to the start date of July 6, 2005 for Long-Term Care Medicaid, a

²Petitioner is concerned by attempts of the estate to hold her responsible for the aunt's bill to Birchwood. Petitioner has been informed to seek legal representation regarding Probate Court matters.

request for fair hearing needed to be filed within 90 days of the March 16, 2006 Notice of Decision. This was not done.

Petitioner has asked that the Board delay ruling because she is asking the Department to make a declaratory ruling pursuant to 3 V.S.A. § 807 whether "a Medicaid penalty situation would exist if only the Nov. 2004 transfer was the only transfer to have taken place". The cited statute refers to the filing of declaratory judgment actions in Washington Superior Court to contest the validity or applicability of an agency rule, not a request to the Department regarding a prior decision. There is no basis to continue this matter as the Board lacks jurisdiction to hear the underlying fair hearing request.

Accordingly, the Department's Motion to Dismiss is granted.

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